The Appellant/Accused was enlarged on bail on dated 9.3.99 and made in Crl.M.P.1496/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.132 of 1999

D.Sekar .. Appellant/Accused

vs.

The State,
Deputy Superintendent of Police,
SPE CBI, Madras. .. Respondents/Complainant

Prayer: This appeal has been preferred U/s 374 Cr PC & Section 9 Crl.Law Amendment Act against the Judgment dated 17.02.1999 made in C.C.No.197 of 1997 on the file of the learned Principal Special Judge for CBI Cases, Chennai.

For Appellant : Mr.K.Ashokan, Senior Counsel,
for Mrs.Gita Ashokan.

For Respondent : Mr.N.Chandrasekaran
Special Public Prosecutor for CBI cases.

JUDGMENT

This appeal has been preferred against Judgment in C.C.No.197 of 1997 on the file of the learned Principal Special Judge for CBI Cases, Chennai. The complaint was preferred by the complainant against the accused before the CBI alleging that the accused D.Sekar, Special Assistant, Oriental Bank of Commerce, was working in the Esplanade Branch of the said Bank and he was transferred to Mount Road Branch from 20.4.1987 till the date of suspension on 13.2.1995. During 1992-93 he entered into a criminal conspiracy with an unknown person to do an illegal act viz, to cheat Oriental Bank of Commerce and committed criminal misconduct by misusing or abusing his official position as Special Assistant of Oriental Bank of Commerce, Mount Road Branch, or by illegal means and thereby caused a total wrongful loss of Rs.1,89,110/-, and in pursuance of the conspiracy accused D.Sekar fraudulently and dishonestly by adopting the same

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tactics, fraudulently withdrew a total sum of Rs.67,500/-. The amount of Rs.25,000/- was paid to M/s AEONS Construction and the amount of Rs.42,500/- was transferred to one of his friends account by name G.K.Mohan by making a false representation to him and subsequently withdrew the said amount through G.K.Mohan from his account and received the amount for his personal use. The accused D.Sekar in collusion with an unknown person C.Kumar by misusing or abusing his official position or by illegal means caused a wrongful loss of a total sum of Rs.2,56,610/- to the Oriental Bank of Commerce and thereby committed the offence punishable under Section 120-B r/w 420, 420, 477-A IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The accused D.Sekar was dismised from service on 8.8.1995. The case was taken on file and copies under section 207 of Cr.P.C were furnished to the accused and charges under section 120-B r/w 420, 420, 477-A IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, were framed and when questioned the accused pleaded not guilty.

2. On the side of the P.Ws. 1 to 14 were examined and Ex.P.1 to P.179 were marked.

3. 3(a)P.W.1 is the Chief Manager, Inspection and Control Department, Oriental Bank of Commerce. He was entrusted with the work of investigating some fraud instances complained of Oriental Bank of Commerce by the Chief Vigilance Officer in the year 1995. Ex.P.1 is report regarding his investigation submitted to the head office. Ex.P.2 to P.4 are the DCRs issued by our mount road branch in favour of Adayar Gate Hotel Ltd., Madras. Ex.P.5 to P.8 are the FDRs issued by our Mount Road branch in favour of Adayar Gate Hotal Ltd., The CDRs and FDRs earned interest of Rs.2,45,120/- and above CDRs and FDRs have been renewed on 7.1.1992, for 12 months. The accrued interest are of Rs.2,45,120/- was kept in Sundry deposit. Out of the interest accrued part amount of Rs.1,62,687/- was converted as VDR No.67/92 dated 8.1.1992. This CDR was issued in favour of Adayar Gate Hotel Ltd., Madras for the period of 3 years. This amount was transferred to sundry deposit to CDR in Voucher dated 8.1.1992 ie., Ex.P.9. This was done by the accused. That the CDR was premature and principal amount of Rs.1,62,687/- was paid to Adayar Hotel on 27.10.1993. The interest of Rs.35,682-20 was paid on 2.11.1993 to the beneficiary namely Adayar Gate Hotel. The remaining amount of Rs.82,433/- was converted into STDR on 13.1.1992. Its number is 18/92 ie., Ex.P.10. This was for 46 days. This STDR amount was paid on 5.3.1992 along with interest of Rs.1142.75. Out of this total amount of Rs.83,575.75 another STDR for Rs.50,000/- bearing No.84/92 favouring Adayar Gate Hotel Ltd. was issued. The credit voucher is Ex.P.11. Out of the remaining amount of Rs.33,575.75 and an amount of Rs.23,000/- were credited in the current account NO.1303 of one Sr.P.S.Govindaraj and for Rs.10,575.75 CDR NO.159/92 was issued favouring Govindaraj for a period of 36

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months. The credit Voucher is Ex.P.12. All credit vouchers are signed by the accused. The CDR was pre-closed on 17.3.1992 to the credit cash voucher signed by accused. The FDR issued on 5.3.1992 for Rs.50,000/- was credited in to the sundry account on 18.5.1992 along with interest of Rs.50,693.15. On 20.5.1992 from the sundry account sum of Rs.50,693-15 was converted into STDR bearing No.193/92 and 194/92 for Rs.10,000/- and 15,000/- favouring K.Ravi for a period of 46 days. The balance of Rs.25,000/- has been utitlised in pay order in favour of AEONS Constructions. The said construction encashed the pay order. The pay order is Ex.P.13 for Rs.10,000/- STDR credit voucher is Ex.P.14. For 15,000/- STDR credit voucher is Ex.P.15. Both the STDR were premature and paid on 23.5.1992 through credit cash voucher passed by the accused. AEONS construction is neither having account in the bank nor deposit. The remaining amount of Rs.693.15 was credited in the interest paid in CDR account and the credit voucher is Ex.P.16. By this process the accused has misappropriated a sum of Rs.83,575.75 on the date of his investigation.

3(b) On 6.11.1991 69 STDRs bearing No.334/91 to 393/91 for Rs.50,000/- each for 46 days were issued in the name of different persons. All the STDRs were closed on 9.6.1992. The interest accrued to Rs.1,49,178/- was converted as CDRs. Bearing No.261/92 for 24 months. The 60 STDRs closed on 9.6.1992 were converted into as 6 CDRs each for Rs.5 lakhs in favour of different persons. Ex.P.17 is the ledger maintained by the bank. In this, in different account Nos. all the 60 STDRs are shown. For converting the 60 STDRs into 6 CDRs the credit vouchers are Ex.P.18 to 24. In this vouchers CDRs numbers are given. On the same day all these amounts were credited on the same day by the accused. In one voucher another officer also has signed along with the accused. The accrued interest were converted as CDR in favour of one G.Sahar for the period of 2 years and the credit voucher is Ex.P.25. On 9.6.1992 the amount of Rs.46,110/- was debited from the interest paid account on the same FDRs i.e. 134/91 to 391/91 through credit cash voucher. That credit cash voucher is Ex.P.26. This credit voucher are signed by the accused and Rakesh Malhothra the then Senior Manager of the bank. Another voucher for Rs.46,110 was also issued under CDR No.268/92 favouring C.Kumar was issued for 24 months. That credit cash voucher is Ex.P.27. This CDR preclosed on 28.7.1992 and this amount was credited in the savings bank account No.4837 of Shri.C.Kumar. Out of this amount a sum of Rs.46,000/- was withdrawn on the same day by the accused through withdrawl slip and the same is Ex.P.28. On the bank side of this withdrawl slip cashier concerned has written "Received by D.Sekar (Staff)". This will go to show that the payment was received by the accused and he has debited the interest twice one at the time of payment of interest to the CDR then to the interest paid account, in the name of C.Kumar.

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3(c) Ex.P.29 is the FDR and CDR register maintained by the bank. On 21.12.1991 our bank has issued FDRs No.68/91 to 103/91 for Rs.50,000/- each in favour of S.Ravindran and M.Arunachalam. On 6.1.1992 the bank has issued CDRs Nos.1/92 to 42/92 for Rs.50,000/- each in favour of S.Ravindran and DERs No.43/92 to 56/92 for Rs.50,000/- each favouring Mr.Arunachalam. On 18.11.1991 STDRs were issued in the name of S.Raviddran each for Rs.1,05,000/- bearing Nos.409/91 to 413/91. On the same day STDR Nos.415/91 to 419/91 were issued in favour of Arunachalam each for Rs.1,05,000/-. These STDR, RDR, CDR file is Ex.P.29. All the above deposits were paid on 18.06.1992 along with interest to the credit of current account No.1359 of Messers Hightech instrument and controls. Ex.P.30 to 33 are the debit vouchers for the above payment. The corresponding credit vouchers are Ex.P.34 to P.37. On the same day again the accused debited from the interest paid account against the same FDR, CDR and STDRs totaling Rs.79,182/- under four different vouchers and they are Ex.P.38 to 41. In these vouchers the accused and Rakesh Malhothra have signed. The other officer signed as counter signature, which is a formal one. The accused has issued one STDR bearing No.233/92 in favour of C.Kumar for the period of 6 months. That STDR is Ex.P.42. For this credit voucher is Ex.P.43. The STDR account was preclosed on 5.8.1992 and the total amount of Rs.80,432.50 was debited from the STDR and transferred to SB account No.4837 of Mr.C.Kumar under Ex.P.44. From this account Rs.81,000/- was withdrawn by the accused in the name of Kumar under Ex.P.45. There is an endorsement on the back side of Ex.P.45 to the effect that the amount has been withdrawn in the name of Kumar. It is stated that the amount was received by the accused. Ex.P.45 appears to have been written by the accused. On the back side of the document the cashier concerned made a note "received by D.Sekar (staff)". By this process accused had misappropriated a sum of Rs.80,432.50 from the bank. Ex.P.46 is the corresponding credit voucher for Ex.P.44. By using the account number of C.Kumar the accused wrongfully caused loss to the bank to the tune of Rs.80,432.50. Ex.P.47 is the statement of account of C.Kumar for S.B.Account No.4837. Ex.P.48 is specimen signature pertaining to the account No.4837.

3(d) Ex.P.49 is the CDR and FDR ledger. On 22.7.1992 the amount of Rs.62,324.70 was debited to interest paid CDR account with 3 different vouchers for Rs.2,304/-, Rs.1,115/- and Rs.58,905/- under Ex.P.50, 51, & 52 amount of interest on CDR Nos.105/92 to 116/90 and CDR Nos.122/92 to 132/90 and FDR Nos.104/91 to 131/91 respectively. Ex.P.50 to 52 were checked by the accused. The corresponding vouchers for Ex.P.50 to 52 are Ex.P.53 to P.57. These amounts were credited into CDR account. Again under Ex.P.58 to P.60 credited to CDR amount on the same day. Again on the same day accused debited CDR account for Rs.2,304/- and Rs.1,115.70. The debit vouchers are Ex.P.16 & P.62. Corresponding credit vouchers are Ex.P.53 & 54. The STDRs were issued in the name of K.Natraj for 46

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days bearing Nos.301/92 and 300/92. The two STD receipts are Ex.P.63 & 64. Again on 23.07.1992 FDR account for Rs.58,905/- was transferred to STDR account and three STDR were issued in the name of K.Natarajan for 46 days, two for each Rs.20,000/- and one for Rs.18,905/-. Ex.P.65 is the debit voucher corresponding to three STDRs (Ex.P.55 to P.57). The STDR are Ex.P.66 to P.68. These STDR are signed by D.Sekar and another officer. On 20.8.1992 all the above three STDR were preclosed and the amount was credited to the account of C.Kumar bearing No.4837. On the same day Rs.62,000/- was withdrawn from the said account through withdrawal form Ex.P.69. On the same day simultaneously accounts were preclosed and transferred to S.B.Account and withdrawn. Ex.P.69 withdrawal form appears to have been written by the accused. On the back side of this document the concerend cashier who made the payment is written as D.Sekar. The withdrawal form also appears to have been initialed by D.Sekar on the back side. By this process the accused has created a loss to the bank to the tune of Rs.62,324.70. The CDRs bearing No.105/92 to No.116/90 and 122/90 to 132/90 are Ex.P.70 to 91.

3(e) On 27.10.1993 the amount of Rs.42,500/- was debited into STDR account on account of payment of STDR No.437/93. The debit voucher is Ex.P.92. Corresponding credit voucher is Ex.P.93. This STDR number is a fictious one. The corresponding debit of Rs.42,500/- was put in to S.B.account No.6431 of one Shri G.K.Mohan. This entire amount was withdrawn by the cheque No.875242 dated 27.10.1993 favouring self. That cheque is Ex.P.94. By this withdrawal actual STDR account was reduced by Rs.42,500/- to compensate that account accused debited interest paid CDR account of Rs.80,560.10 and the voucher Ex.P.95 was signed by the accused. The corresponding credit was given to STDR account, under Ex.P.96 by the accused. By this the STDR account was raised by Rs.38,060.10. The excess amount was withdrawn by credit cash voucher. By this process the accused has withdrawn fradulently Rs.80,560.10 from the bank. The accused was the general secretary of workman union. Since he has to be union leader other staff members have not objected. After the investigation he has enquired the accused. P.w.1 was staying in Breeze Hotal. On 24.4.1995, the accused came to his (P.W.1) room at about 4.30 pm. P.W.1 enquired about the entries. The accused denied stating that he has not been benefited by the entries and subsequently he confessed that he has misappropriated a sum of Rs.2,50 lakhs. P.W.1 asked him to give a written statement regarding what ever he wants to say. At that time Mr.O.P.Agarwal and Shri K.B.Jain ware present. The accused wrote his confession statement in the presence of P.W.1, which is Ex.P.97. Ex.P.97 was written by the accused without any pressure of any external influence. He has signed in the statement and two witnesses have also signed and the statement was addressed to P.W.1. The total amount misappropriated by the accused come to Rs.11 lakhs. Ex.P.98 is the carban copy of report submitted by P.W.1 in respect of the investigation he had conducted.

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4. P.W.2-Mr.O.P.Agarwal is working as a Manager Oriental Bank of Commerce, Inspector and Control Department New Delhi. Along with P.W.1, P.W.2 has also come to Madras to investigate the case. On 24.4.1995 afternoon accused came to the hotel after 2.00 pm, where P.W.1 & P.W.2 were staying. On examination, according to P.W.2, the total misappropriated amount comes to approximately 11 lakhs. The accused initially was hesitant to accept the amount Rs.11 lakhs fraud committed by him. During further examination and after showing the relevant papers relating to the transaction, the accused had accepted that he has misused upto Rs.2.50 lakhs. After his admission he was informed that if he wants to say anything it should be given in writing. After that he was staying separately and wrote a letter addressed to P.W.1. The said letter is Ex.P.97. P.W.2 has also signed in Ex.P.97 as a witness. The other witness is Mr.K.B.Jain, Chief Manager, Mount Road, Madras Branch. Ex.P.97 is in the handwriting of the accused. This letter was given by the accused on his own will.

5. 5(a) P.W.3 would depose that he was working as Clerk-cum-Cashier, Oriental bank of Commerce, Regional Office at Lucknow. Since June 1984, P.W.3 is working in Oriental Bank of Commerce. He was working in the Madras Branch in the year 1990. Mr.Rakesh Malhotra was the senior Manager. P.W.3 would state that the accused was Special Assistant and General Secretary of Tamil Nadu State Employees Association of Oriental Bank of Commerce, Tamil Nadu State. He was also incharge of fixed deposit. As Special Assistant, he will pass all the vouchers pertaining to fixed deposits. At that time P.W.3 was working as a Head Cashier. The credit cash voucher for making cash payment dated 17.3.1992 for Rs.10,575/- is Ex.P.99. This voucher has been passed by the accsued D.Sekar. This proceedings under C.D.R.No.159/92 in the name of Govindaraj. On that day he (P.W.3) is the cashier. Token No.65 was issud on that day. On that day P.W.3 made the payment of Rs.10,575.75. Through Ex.P.99 payment was made by the accused D.Sekar. At the time of payment P.W.3 did not obtain the signature of the accused and it was already signed. Another credit cash voucher dated 23.5.1992 for Rs.10,000/- is Ex.P.100. The payment was made in favour of K.Ravi and the voucher was passed by the accused. This voucher was prepared on maturity S.T.D.R.No.193 of 1992. This amount was also paid by P.W.3 and the accused received the money. The token was also brought by the accused D.Sekar. Another credit cash voucher dated 23.5.1992 for Rs.15,000/- is Ex.P.101. That is also in favour of Ravi. This voucher was also passed by the accused D.Sekar. After passing of voucher payment will be made. P.W.3 insisted for the accused to bring Ravi. But the accused used to tell that he is one of his best friends and he came to collect the money since the accused was very busy in making payments, so he requested him to collect the money from cashier and handover money at his house. P.W.3 paid the amount

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to the accused. Before making payments without the presence of payee P.W.3 reported the senior Manager the same. But he instructed P.W.3 to pay the cash to the accused D.Sekar. S.T.D.Rs bearing Nos.193/92, 194/92 are Ex.P.102 and P.103. Basing on the maturity of S.T.D.Rs Ex.P.102 and P.103 payments are made through Ex.P.100 and P.101. The withdrawal slip dated 28.07.1992 for Rs.46,000/- on S.B. Account No.4837 standing in the name of C.Kumar bearing token No.20 passed by Soundra Rajan and this payment was made by P.W.3 to the accused D.Sekar.

5(b) P.W.3 would further depose that he has not seen Kumar and the token was brought by the accused D.Sekar and the accused has refused to sign on the back of the voucher. This was informed to Senior Manager who had instructed P.W.3 to handover the cash to the accused but this time P.W.3 wrote on the back side of the voucher Ex.P.28 'Received by D.Sekar, (Staff)". P.W.3 has made payment to the accused D.Sekar and as a cashier P.W.3 has singed. P.W.3 would further depose that he is familiar with the handwriting of the accused. The withdrawal slip is filled up, which was in the handwriting of the accused. The credit cash voucher Ex.P.38 dated 18.6.1992 for Rs.7,169/40 being the interest paid on F.D.R.No.86/91 to 103/91. Ex.P.39 is the credit cash voucher dated 18.6.1992 for Rs.7,059.60 being the interest paid to the F.D.R.Nos.68/91 to 85/91. Ex.P.40 is another interest paid voucher on C.D.R.Nos.1/92 to 56/92 for Rs.21,918/40. Ex.P.41 is the cash credit voucher dated 18.6.1992 for a sum of Rs.43,035.50 for S.T.D.D.R.Nos.409/91 to 419/91 except 414/92. Ex.P.43 is the cash deposit voucher, cash to be deposited in the account of S.T.D.R.No.233/92 favouring C.Kumar. This amount was not received by P.W.3. This document also contains the writing of the accused D.Sekar. The total amount is Rs.79,182.90. Ex.P.38 is passed by the Rakesh Malhotra, Senior Manager. Ex.P.39 is pased by the accused D.Sekar and Ex.P.40 is passed by Rakesh Malhotra, Senior Manager. Ex.P.41 is passed by Rakesh Malhotra. All the above Ex.P.31 to 41 amounts are paid by P.W.3. The amount of these voucher were paid to CR.Nair, Accountant, Adayar Gate Hotel. Ex.P.45 is withdrawal slip dated 7.8.1992 for Rs.81,000/- from S.B. Account No.4837 in favour of C.Kumar was paid by P.W.3 to the accued D.Sekar. This time also the accused refused to make receiving signture. Hence, P.W.3 wrote on the back of the voucher "received by D.Sekar, (staff)". After reporting to Senior Manager and some other Managers, P.W.3 paid the cash to the accused D.Sekar. This withdrawal slip is filled in by the accused D.Sekar. Ex.P.69 is withdrawal slip dated 20.08.1992 for Rs.62,000/- from S.B.Account No.4837 favouring C.Kumar in token No.15. This withdrawal form is also filed by the accused D.Sekar. But, this amount was not paid by P.W.3. The white paper covers a part of the signature and words a part of the court seal. On the back initial of C.Kumar is there in black. The accused happens to be a staff and Union leader nobody resisted.

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6. P.W.4-Motila is working as an officer in OrientalBank of Commerce, Tirupur. From 1986 to 1994 he was working in Mount Road branch as cleark-cum-cashier. He knows the accused D.Sekar. During that period he was working as Special Assistant. He was a General Sercretary of the Employees' Union of the State. There were working together for nearly 5 or 6 years. P.W.4 is familiar with the handwriting and signature of the accused. Ex.P.94 is the cheque dated 27.10.1993 for Rs.42,500/- drawn in favour of G.K.Mohan issued by P.W.4. Cheque No.875242 dated 27.10.1993 payment was released by one Mr.K.Raghavan incharge of Savings Bank account. P.W.4 is the cahsier on that day and he paid that amount to G.K.Mohan. Ex.P.97 is the letter dated 24.4.1995 addressed to Chief Manager, Inspection & Control Department, Oriental Bank of Commerce, New Delhi, written by the accused D.Sekar and signed by him.

7. P.W.5- Roshan Rippet is the Manager in the Mount Road branch of Oriental bank of Commerce. P.W.5 would depose that she knows the accused D.Sekar since he was working as a Special Assistant in the Mount Road branch. P.W.5 would depose that voucher Ex.P.104 prepared by the clerk for issue of S.T.D.Rs for Rs.83,433/-, authorised by the accused D.Sekar. On the basis of Ex.P.104. Ex.P.10 was issued by their branch in favour of Adayar Gate Hotel, Madras. First signature in Ex.P.10 was signed and approved by the accused D.Sekar and P.W.5 made the second signature. She could identify the signature of the accused D.Sekar. Ex.P.43 is the credit voucher dated 18.6.1992 for Rs.79,182.90 in favour of C.Kumar for issue of S.T.D.Rs. Basing on Ex.P.43, Ex.P.42 S.T.D.R. Receipt bearing No.233/92 and printed No.762133 dated 18.6.1992 for Rs.79,182-90 in favour of C.Kumar signed by the accused D.Sekar approved by him which was prepared by a clerk. P.W.5 has made her second signature. Ex.P.55 is S.T.D.R. Voucher dated 23.7.1992 for Rs.20,000/- favouring K.Nataraj. Ex.P.56 is the S.T.D.R. Voucher dated 23.07.1992 for Rs.20,000/- favouring K.Nataraj. Ex.P.57 is S.T.D.R. Voucher dated 23.7.1992 for Rs.18,905/- favouring K.Nataraj. The above 3 vouchers contain the initials but P.W.5 did not know to whom they belong. On the basis of Ex.P.55, F.D.R. receipts bearing No.762207 dated 23.07.1992 for Rs.20,000/- in favour of K.Nataraj for a period of 46 days, which is Ex.P.66. On the basis of Ex.P.56, Ex.P.67, F.D.R. Bearing No.767208 dated 23.7.1992 for Rs.20,000/- favouring K.Nataraj for a period of 46 days, and on the basis of Ex.P.57 and Ex.P.68 F.D.R. bearing N.762209 dated 23.7.1992 for Rs.18,905/- favouring K.Nataraj for a period of 46 days. In Ex.P.66, P.67, and P.68 the first signatory is the accused D.Sekar signed and approved by him and P.W.5 made the second signature. The accused was incharge of deposit section. Based on the first signature P.W.5 has made the second signature. As per rules the documents bear two signatures.

8. P.W.6 is also working in Oriental bank of Commerce as Clerk-cum-teller in Overseas branch, Madras. During 1985 to 1991 she was

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working as clerk in the Mount Road branch. On 29.6.1990 she prepared CDR bearing No.105 to 116 of 1990 marked as Ex.P.72 to P.81. Ex.P.50 is the ledger pertaining to Ex.P.70 to Ex.P.81. Ledger entries pertaining to Ex.P.105 to Ex.P.116 were written by P.W.6. On 22.7.992 the CDR Ex.P.70 to Ex.P81 were closed for which necessary entries were made by their bank in Ex.P.105 to Ex.P.116. It was authenticated by the accused D.Sekar, who has initialled in the ledger. P.W.6 worked along with the accused for six years and she could identify the signature of the accused. The ledger relating to CDR.88/90 dated 4.6.1999 and CDR.122/90 dated 5.7.1990 were not prepared by P.W.6. Ex.P.117 is the original ledger of STDR bearing No.88/90.

9. 9(a) P.W.7-Sundarsan is working in Oriental Bank of Commerce in Overseas Branch in Madras, from April 94. He joined in the service on 15.12.88 in Regional Office Bombay. In January 1990 He was transferred to Mount Road branch. He was working in current account and establishment. The accused D.Sekar was incharge of Deposit Section and he was the General Secretary of the Association.

9(b) P.W.7 would further depose that Cumulative deposit receipts issued by the Bank in favour of Adyar Gate hotel are Ex.P.2 to Ex.P.8. Ex.P.3 to P.8 are written by him. He prepared Ex.P.5 to Ex.P.8 on 20.5.1991. Ex.P.2 is prepared for Rs.2,02,016/- dated 27.5.1991. Ex.P.3 is for Rs.10,10,000/- and Ex.P.4 is for Rs.10,10,000/- and Ex.P.5 is for Rs.20,000/00. Ex.P.6 is Rs.16,00,000/- and Ex.P.7 is for Rs.10,00,000/-. Ex.P.8 is for Rs.46,377/-. The above FDRs were closed on 7.1.1991. But actually he closed the FDRs on 7.1.1992 and he has put by mistake 91 instead 92. P.W.7 prepared the transfer debit vouchers for Rs.20,62,137/05 on 7.1.1992 which is Ex.P.118. Similarly on the same date he prepared Ex.P.119 for Rs.27,28,596.20, Ex.P.120 for Rs.7,889.95 and Ex.P.121 for Rs.10,440.80, Ex.P.122 for Rs.23,22,006/75 bearing FDR.No.29/91, 30/91, 31/91, 32/91 respectively. The FDRs relate to interest paid. These were prepared by him (P.W.7) as per the instructions of the accused D.Sekar. On the same day(7.1.1992) the following transfer credit vouchers were prepared by him (P.W.7):- Ex.P.123 on 7.1.1992 for Rs.10,10,000/- being renewal of CDR No.200/91, Ex.P.124 for Rs.10,10,000/- being renewal of CDR No.201/91, Ex.P.125 is for Rs.2,02,016/- being renewal of CDR.No.195/91, Ex.P.126 for Rs.46,377/- being renewal of FDR.No.32/91 for one year; in favour of Adyar Gate Hotel. Ex.P.127 is for Rs.16,00,000/- being FDR.30/91, Ex.P.129 is for Rs.20,00,000/- renewal of FDR No.29/91, Ex.P.130 is for Rs.82,433/- for the credit of Sundry Deposit Account being the interest on CDR.No.200/91, 201/91, 195/91. It is credited into sundry deposit account. Ex.P.131 is for Rs.1,62,687/- being the interest on FDR.30, 31, 32 of 1991 in favour of Adyar Gate Hotel, credited into sundry deposit account. Ex.P.132 is for Rs.17,557/75 for the credit of

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interest paid in CDR which are vouchers prepared by P.W.7 as per the directions of the accused D.Sekar. All the vouchers viz. Ex.P.118 to Ex.P.132 were authorised by the accused D.Sekar. He could identify the signature of the accused D.Sekar. He has put the initials in all the above vouchers. He is the authorising officer to sign the vouchers.

9(c) P.W.7 would further depose that on 8.1.1992 as per the instructions of the accused D.Sekar, he prepared Ex.P.133 for Rs.1,62,637/- to the debit of Sundry deposit account being the entry dated 7.1.1992 in the name of Adyar Gate Hotel, Ex.P.134 is for Rs.82,433/- on 13.1.1992 being the transfer debit voucher in sundry deposit account for entry dated 7.1.1992 reverse in favour of Adyar Gate Hotel. Ex.P.135 is for Rs.50,693.15 on 18.5.1992 debiting STDR Account NO.84/1992 closed. Ex.P.136 is transfer credit voucher for Rs.50,693.15 to the credit of sundry deposit account being STDR No.84/92 closed. On 20.5.1992 Ex.P.137 is for Rs.25,000/- crediting pay order in favour of AEOMS on account of remittance made by K.Ravi. All the above vouchers were prepared by P.w.7 and authorised by the accused D.Sekar. Ex.P.13 is a Pay Order based on Ex.P.137 for Rs.25,000/- favouring AEOMS was not prepared by him but by some body else, authorised by one Soundararajan. Ex.P.14 dated 20.5.1992 for Rs.10,000/- for the credit of STDR.No.193/92 favouring K.Ravi prepared by him and authorised by the accused D.Sekar. Ex.P.15 dated 20.5.1992 for Rs.15,000/- crediting STDR.194/92 favouring K.Ravi for 46 days. Ex.P.102 dated 20.5.1992 is the deposit receipt bearing STDR.No.193/92 in favour of K.Ravi for Rs.10,000/- for 46 days. Ex.P.102 dated 20.5.1992 is the deposit receipt bearing STDR.No.193/92 in favour of K.Ravi for Rs.10,000/- for 46 days, written by him (P.W.1) authorised by D.Sekar, the accused, and the second signature by Soundarajan. Ex.P.103 is deposit receipt bearing STDR.194/92 for Rs.15,000/- prepared by him authorised by the accused D.Sekar, bearing printed No.762090, 762091 respectively. Second signatory is also working in our branch. Ex.P.100 is credit cash voucher dated 23.5.1992 for Rs.10,000/- debiting STDR.No.193/92 as closed written by him (P.W.1) as per the instructions of the accused D.Sekar, authorised by him. Ex.P.99 is credit cash voucher daed 17.3.1992 for Rs.10,575/- debiting CDR.account No.159/92 as closed, authorised by the accused D.Sekar. Ex.P.101 is credit cash voucher dated 23.5.1992 for Rs.15,000/- debiting STDR.No.194/92 as closed, written by him(P.W.1) as per the instructions of the accused D.Seker, authorised by him and three days after Ex.P.102 and Ex.P.103 were prepared.

9(d) P.W.7 would further depose that in Ex.P.100 and Ex.P.101 cashier Surendrakumar made the payments to Mr.Ravi. He do not know Mr.Ravi. The accused instructed P.W.7 to prepare the voucher and he prepared it. Since he was new to the department he wrote the vouchers based on the dictation of the accused D.Sekar. Ex.P.18 is the STDR, a part of FDR ledger bearing page No.334 to 392

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being 60 receipts issued in the name of various parties on 6.11.1991, and the FDRs are closed on 9.6.1992. They were prepared for a period of 46 days. For closing the 60 STDRs bearing Nos.334 to 396/91 debited interest paid STDR account for Rs.1,07,589/- at the rate of Rs.1,793.15 for a period upto 17.4.1992. This voucher is signed by the accused D.Sekar and Rakesh Malhotra, who has signed in addition. In the place of authorised officer D.Sekar signed. The debit transfer voucher Ex.P.38 is written by him. P.W.7 has also prepared Ex.P.19 debit transfer voucher dated 9.6.1992 for Rs.31,49,178/- to the debit of STDR account No.334/91 to 396/91 as closed. Ex.P.138 and Ex.P.19 are approved by the accused D.Sekar and Raksh Malhotra. On 9.6.1992 P.W.7 has prepared credit transfer voucher No.263/92 favouring Kumaresan for 2 years for Rs.5,00,000/- in Ex.P.20. With respect to Ex.P.21 which is a credit transfer voucher dated 9.6.1992 for issue of CDR.No.264/92 favouring G.Oliver for 2 years for Rs.5,00,000/-. With regard to Ex.P.22 he has prepared a credit transfer voucher dated 9.6.1992 for issue of CDR.No.265/92 favouring G.Robert for 2 years for Rs.5,00,000/-. With respect to Ex.P.23 which is a credit transfer voucher dated 9.6.1992 for issue of CDR.No.2662/92 favouring G.Backiam for 2 years for Rs.5,00,000/-. With respect to Ex.P.24 a credit transfer voucher dated 9.6.1992 for issue of CDR.No.267/92 favouring G.Shyam for 2 years for Rs.5,00,000/-. With respect to Ex.P.25 a credit transfer voucher dated 9.6.1992 for issue of C.D.R.No.267/92 favouring G.Sekar for 2 years on account of interest on STDR from 334 to 396/91 upto 17.4.1992. In this voucher favouring name has not been filled by him. All the above vouchers were prepared by him and authorised by the accused D.Sekar. Ex.P.15 was also signed by Rakesh Malhotra. He has also prepared credit cash voucher Ex.P.26 dated 9.6.1992 to the debit of interest paid STDR account being interest on STDR.Nos.334 to 396/1991 for the period from 18.4.1992 to 8.6.1992 for a period of 51 days at Rs.768.50 for STDR. This voucher is signed by the accused D.Sekar and Rakesh Malhotra, in addition to that. P.W.7 has also prepared Ex.P.139 which is a debit cash voucher dated 9.6.1992 for the credit of CDR.No.268/92 favouring C.Kumar for 2 years. In this voucher the favouring name C.Kumar is not written by him. This voucher is signed by the accused D.Sekar and Rakesh Malhotra in addition. The above cash voucehrs were prepared by him by taking down dictation by the accused D.Sekar. When he prepared that voucher the name of C.Kumar was not there. On the basis of this voucher he has prepared Ex.P.27 to CDR bearing No.381879/268/92 dated 9.6.1992 favouring C.Kumar for Rs.46,100/- for a period of 2 years. This receipt is signed by the accused D.Sekar as the first signatory and Leelavathy Officer as 2nd signatory. The C.D.R-Ex.P.140 has been closed on 28.7.1992. He has prepared transfer debit voucher for Rs.46,821.90 credited to Ex.P.141, which is transfer credit voucher dated 28.7.1992 for the credit of S.B.Account No.4837/- of C.Kumar, approved by the accused D.Sekar and he has prepared the vouchers as per the instructions of the accused D.Sekar. A withdrawal slip

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Ex.P.28 dated 28.7.1992 for Rs.46,000/- has been utilised to withdraw the amount signed by the account holder. He could not decipher the signature. On the back side of the withdrawal slip cashier has written "received by D.Sekar (staff)". Similar signature is available on the back side resembling the signature of the account holder. The said vouchers were written by P.W.7 as per the instructions of the accused D.Sekar except the withdrawal slip.

9(e) P.W.7 would further depose that FDR dated 21.12.1991 is Ex.P.142. FDR.68/91 dated 21.12.1991 is for Rs.50,000/- in favour of S.Ravindran, FDR.No.69/91 to 85/91 dated 21.12.1991 forRs.50,000/- each favouring S.Ravindran are Ex.P.143 series (18 FDRs). He has prepared FDR.Nos.86/91 to 103/91 dated 21.12.1991 each for Rs.20,000/- in favour of M.Arunachalam Ex.P.144 series (18 FDRs). CDR.No.1/92 to 41/92 dated 6.1.1992 each for Rs.50,000/- in favour of M.Arunachalam are Ex.P.145 series (41 CDRs). CDR.No.42/92 to 56/92 dated 6.1.1992 each for Rs.50,000/- in favour of S.Ravindran is Ex.P.146 series (15 CDRs) STDR.No.409/91 to 413/91 dated 18.11.1991 each for Rs.1,05,000/- in favour of M.Arunachalam, S.Ravindran, Ramesh Chandra, M.Arunachalam and Remesh Chandra repectively are Ex.P.147 series (5 STDRs). STDR.No.415/91 to 419/91 dated 18.11.1991 each for Rs.1,05,000/- in favour of M.Arunachalam, Ramesh Chandra, S.Ravindran, Ramesh Chandra, S.Ravindran respectively, are Ex.P.148 series (5 STDRs). On 18.6.1992 all the above documents have been closed. Ex.P.30 to Ex.P.33 are debit vouchers dated 18.6.1992, relating to FDR.Nos.68/91 to 85/91, 86/91 to 103/91; CDR.No.1/92 to 56/92 STDR.Nos.409/91 to 419/91 (except 414/91). Except Ex.P.30 all other vouchers are in his handwriting. All the vouchers referred to above are signed by the accused D.Sekar and Rakesh Malhotra has also signed which were credited to the following debit vouchers:- Credit voucher Ex.P.34, Ex.P.35, Ex.P.36 and Ex.P.37 & Ex.P.34 were originally prepared for the credit of M.Arunachalam somebody has changed to read as "Hit Tech Instruments". This voucher was originally written by him and Rakesh Malhotra has singed. Ex.P.35 was originally prepared to the credit of Arunachalam, originally written by P.W.7 and approved by the accused D.Sekar and Rakesh Malhotra has also signed the voucher. Ex.P.36 was not prepared by him and the accused D.Sekar and Rakesh Malhotra have signed it. Ex.P.37 was originally prepared by him to the credit of M.Arunachalam and somebody has changed to read as "Hi Tech Instruments". This voucher was also originally written by him and approved by the accused D.Sekar and Rakesh Malhotra has signed it. It appears that somebody has diverted the funds. On 18.6.1992 Ex.P.38 to Ex.P.43 are written by him as per the dictation of the accused D.Sekar and Sekar has approved the vouchers as authorised officer and Rakesh Malhotra has signed it. Again on 18.6.1992 he has prepared a debit cash voucher Ex.P.43 for Rs.79,182/90 for credit of STDR.233/92 favouring C.Kumar. Based on this debit cash voucher Ex.P.43, STDR receipt favouring C.Kumar Ex.P.42 was prepared, in favour of

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C.Kumar. The original has been prepared as per the instructions of the accused D.Sekar and second signature by S.M.T.Roshen Raphel. This STDR has been preclosed on 5.8.1992 and Ex.P.4 was prepared by him, debit transfer voucher dated 6.8.1992 for Rs.80,432.50 which is Ex.P.44. This amount has been credited to SB Account No.4837 by name C.Kumar which is Ex.P.46. The debit vouchers have been approved by R.Balakrishnan, Officer.

9(f) P.W.7 would further depose that a withdrawal slip has been utilised to draw the amount of Rs.81,000/- which is Ex.P.45. On the back side of the withdrawal slip cashier has written by "Received by the accused D.Sekar". Ex.P.70 to Ex.P.81 are cumulative deposit receipts issued on 29.6.1990 favouring various parties, for Rs.25,000/- each. Ex.P.82 to Ex.P.91 issued on 5.7.1990 favouring various parties for vrious amounts, for the same period of 24 months. All the above vouchers have been closed on 22.7.1992 for which I have prepared Ex.P.149. A debit transfer voucher dated 22.7.1992 to the debit of CDR Account being CDR.No.122/90 to 132/90 closed for Rs.2,43,680/, which is Ex.P.150. A debit transfer voucher dated 22.7.1992 to the debit of CDR account being CDR No.105/90 to 116/90 closed, both the vouchers have been prepared by him as per the dictation of the accused D.Sekar who has signed as an authorised officer, approved the vouchers. The amounts have been utilised for issue of CDR.No.362/92 and 366/92. For this purpose P.w.7 has prepared Ex.P.151. Credit transfer voucher dated 22.7.1992 for Rs.2,43,680/- was credited to CDR.No.367/92. Originally he has prepared as favouring K.Nataraj and changed somebody else to read as 'K.Varadaraj". Ex.P.152 is a credit transfer voucher daed 22.7.1992 for issue of CDR.366/92 favouring K.Geerti for Rs.3,65,520/-. Ex.P.149 and Ex.P.150 were closed and are contra vouchers to Ex.P.151 and Ex.P.152. Those two vouchers were also prepared by him and approved by the accused D.Sekar. Ex.P.50, Ex.P.51, Ex.P.52 and Ex.P.61, Ex.P.62, Ex.P.65 were prepared by P.W.7 as per the instructions of the accused D.Sekar, who has signed as authorised Officer. Ex.P.58, Ex.P.59, Ex.P.60 are contra credit vouchers to the above debit vouchers. Ex.P.53, Ex.P.54, Ex.P.55, Ex.P.56 and Ex.P.57 are written by P.W.7 as per instructions of the accused D.Sekar on 22.7.1992. Basing on this Ex.P.63, Ex.P.64, Ex.P.65, Ex.P.66, are STDRs issued by branch office, Mount Road, oriental bank of Commerce. These vouchers are prepared by somebody else and issued by the accused D.Sekar as first signatory in all the cases and and second signatory by Sri.Soundrarajan, an officer. In Ex.P.63 and Ex.P.64 Rashen Riffeth has signed. In Ex.P.153 transfer debit voucher dated 20.8.1992 for Rs.62,324.70 STDR.No.300/92, 301/92 and 305/92 to 307/92 preclosed has been prepared by somebodyelse and the accused D.Sekar has signed as authorised signatory. Ex.P.154 transfer credit voucher dated 20.8.1992 for Rs.62,324.70 credit to S.B. Account No.4837 in favour of K.Nataraj for C.Kumar being the proceeds of SRDR.No.300, 301, 305 to 307 of 1992 closed before

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maturity. This voucher is also written by somebody else and signed by the accused D.Sekar as authorised signatory. A withdrawal slip in Ex.P.49 has been utilised to withdraw the money from SB Account No.4837.

10. P.W.8 -Narayanakutty is working as Clerk-cum-Cashier in Oriental Bank of Commerce in Calicut. He joined on 9.10.1978 as peon (sub Staff), in Jabalpur. From there he was transferred to Madras in 1981 and promoted in November 1989 and was posted to Mount Road Branch. He knows the accused D.Sekar, who is the head of deposit section at that time. P.W.8 would further depose that Ex.P.11 was prepared by him which is the STDR for Rs.50,000/-. Ex.P.155 is the STDR for Rs.83,575.75. Both the documents were prepared by P.W.8 as per the instructions of the accused D.Sekar. Ex.P.156 is the STDR which was prepared by him but the word 'sundry' was not written by him. It is the STDR for Rs.33,575.75. Ex,P.157 is Sundry deposit slip for Rs.33,575.75 which is debit voucher, prepared by him. Ex.P.158 is the current account voucher for Rs.23,000/- in the name of P.W. Govindarajan, and the same was prepared by P.W.8. Ex.P.159 is the cumulative deposit in favour of P.S.Govindaraj for Rs.10,575.75, which was also prepared by P.W.8 by copying it from the credit voucher and the accused D.Sekar was the authorised officer at that time.

11. 11(a) P.W.9-Rakesh Malhotra has joined Oriental Bank of Commerce in June 1974 as Clerk-cum-Godown Keeper and promoted as officer during July 1978. Then he was promoted as Manager in 1980 and then promoted as senior Managar in 1986 and posted to Mount Road, Madras branch. P.W.9 would depose that he knows the accused D.Sekar who was working as Special Assistant from 1983. The accused was looking after the Deposit Section of the branch. There P.W.9 was the incharge of the branch. Ex.P.18 is the CDR register. Ledger folio 334/91 , 393/91 are showing the account of Lakshminarayan Aroda, containing the name of various persons. Ex.P.25 is the transfer voucehr dated 9.6.1992 for Rs.1,49,178/- shown as interest on STDR from 334/91 to 396/91 showing interest paid upto 17.4.1992. The interest amount of Rs.1,49,178/- was utilised for making the new CDR bearing No.261/92 on 9.6.1992. This voucher has been prepared by the accused D.Sekar and passed by him with his signature. This voucher also bears P.W.9's counter signature.

11(b) Ex.P.26 is a credit cash voucher made on 9.6.1992 and passed by the accused D.Sekar and he (P.W.9) do not know who prepared it. It was prepared for Rs.46,110/- interest on STDR.No.334/91 to 396/91 for the period from 18.4.1992 to 8.6.1992 i.e. For 51 days at the rte of Rs.768.50 per STDR. Ex.P.27 is the CDR.No.268/92 dated 9.6.1992 for Rs.46,110/- prepared by the branch and signed by the accused D.Sekar and Mrs.Leelavathi in favour of C.Kumar. Ex.P.141 is the transfer credit voucher for Rs.46,821/90 credited to SB Account No.4837 of C.Kumar dated 20.8.1992 passed by the accused D.Sekar. Ex.P.28 is a withdrawal form dated 28.7.1992 for Rs.47,000/- being

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the amount withdrawn from SB Account No.4837 of C.Kumar received by the accused D.Sekar (staff). The word 'received by D.Sekar are written by Mr.Surendrakumar, head cashier. The amount is shown as credit by way of transfer voucher dated 28.7.1992 and withdrawn by withdrawal from dated 28.7.1992. Ex.P.142 and Ex.P.143 are FDRs.68/91 to 69/91 issued on 21.12.1991 for Rs.50,000/- each. Ex.P.32 to Ex.P.36 are debit and credit vouchers prepared on 18.6.1992 showing CDR.No.1/92 to 56/92 closed for Rs.28,91,000/-. This voucher has been passed by the accused D.Sekar and P.W.9 has signed as second signatory believing that these represent correct transactions. Similarly the voucher for Rs.10,64,556.50 has been passed by the accused D.Sekar and he has signed as second signatory believing that the vouchers have been passed correctly. Also the voucher for Rs.9,32,776.20 dated 18.6.1992 has been passed by the accused D.Sekar and counter signed by him in good faith. Ex.P.38 to Ex.P.143 are interest paid vouchers for Rs.7,169.40, Rs.7,059.60, Rs.21,918.40, Rs.43,035.50 and Rs.79,182.90 have been passed by the accused D.Sekar and countersigned by him in good faith. Ex.P.46 is a debit voucher dated 5.8.1992 for Rs.80,432.50 showing STDR.No.233/92 as closed in favour of SB Account NO.4837 for C.Kumar as per voucher dated 5.8.1992. Ex.P.44 and Ex.P.46 were passed by R.Balakrishnan, whose signature he identified. Ex.P.45 is a withdrawal voucher dated 7.8.1992 for Rs.81,000/- paid. In the back side of the voucher it is written as 'received by D.Sekar' by Surendrakumar, Head Cashier.

11(c) P.W.9 would further depose that Ex.P.105 to Ex.P.117 bearing FDR.No.105/90 to 116/90 and 88/90 for Rs.30,460/- respectively for Ex.P.105 and Ex.P.106. Interest is Rs.331.40 from CDR.105/90 to 116/90 and Rs.196.70 for CDR.No.88/90. For CDR.122/90 to 132/90 total interest credited is Rs.4,149.60. Ex.P.160 series (28 sheets) is the FDR.No.104/91 to 131/91 which are the ledger sheets, in Ex.P.29. Ex.P.50 is the debit voucher for an amount Rs.2,304/- shown as overdue interest on CDR.No.105/90 to 116/90, passed by the accused D.Sekar. Ex.P.51 is the debit voucher dated 22.7.1992 for Rs.1,115.70 being the overdue interest paid on CDR.No.122/90 to 132/90 as per details given on the back of the voucher. This voucher has been passed by the accused D.Sekar. Ex.P.52 is the debit voucher dated 22.7.1992 for Rs.58,905/- shown as interest on FDR.No.104/91 to 131/91, passed by the accused D.Sekar. Ex.P.63 is the deposit receipt dated 22.7.1992 for Rs.1,115.70 made out of the interest paid, ie., Ex.P.51 debit voucher. This FDR has been issued for 46 days and signed by the accused D.Sekar and another Officer bearing power of Attorney No.2792 in favour of K.Nataraj. Similarly Ex.P.64 is the FDR.No.301/92 issued on 22.7.1992 for Rs.2,304/- made out of interest paid Ex.P.50, ie., FDR. This has also been signed by the accused D.Sekar and another officer bearing power of Attorney. Ex.P.66 is the FDR.No.305/92 issued on 23.7.1992 for Rs.20,000/- in favour of K.Nataraj for 46 days. This FDR has been signed by the accused D.Sekar and Mrs.Roshen Rifeth. Similarly Ex.P.67 and

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Ex.P.68 are the FDR.Nos.306 and 307 for Rs.20,000/-, Rs.18,905/- issued in favour of K.Nataraj signed by the accused D.Sekar and antoher officer. Ex.P.153 is the debit voucher dated 20.8.1992 for Rs.62,324.70 being STDR.No.300, 301, 305 and 307/92 as closed and same amount transferred to SB Account No.4837 of C.Kumar, ie., Ex.P.154. The above amount transferred into the account of C.Kumar has been withdrawn on 20.8.1992 vide withdrawal form Ex.P.69 passed by an officer Mrs.R.Manimegalai and countersigned by Mrs.Roshan Rifeth. This withdrawal is signed on the back side by C.Kumar and initialied which he could not decipher. The withdrawal form is a manipulated withdrawal of the amount credited in the exhibit as said earlier. Ex.P.2 to Ex.P.8 are FDR & CDRs issued in favour of Adyar Gate Hotel on various accounts and various dates.

12. P.W.10-T.S.Murali is the Director of AEONS Construction Products Ltd., in Gumidipoondi. They are manufacturing concrete blocks. He knows the accused D.Sekar. In 1992 the accused D.Sekar approached the AEONS Construction to buy some concrete blocks. The concrete invoices were sent under four invoices. The accused has paid the amount of Rs.25,000/- by cheque. The AEONS Construction presented the cheque to the Bank which got rebounced. P.W.10 met the accused and collected the pay order. Ex.P.13 is the pay order given by the accused dated 20.5.1992 addressed to AEONS.

13. P.W.11-G.K.Mohan, is working as Civil Engineering Contractor having his office at Mandaveli, Chennai. He opened Saving Bank Account in Oriental Bank of Commerce in Mount Road branch, bearing SB Account No.6431. The xerox copy of the account opening form is Ex.P.161. He knows the accused D.Sekar. When he was working in Spencer Plaza, the accused was the representative of the Oriental bank. P.W.11 got a cheque drawn on his favour for Rs.42,500/- when the accused was keeping the said amount in his amount. The accused had asked to withdraw this amount. Ex.P.94 is a cheque for Rs.42,500/- and amount was given to the accused D.Sekar. As a friend he obliged him.

14. P.W.12-Sathyanatha Nair was working as a partner of M/s Consolidaed Marine Servies at Bangalore. In 1981 to 1993 he was working in Adyar Gate Hotel. He joined in the hotel as Accounts Executive, and at the time of leaving he was the Finance Manager. Mr.O.P.Goel was the Managing Director. According to the instructions of Mr.O.P.Goel, P.W.12 used to sign the various fixed deposit receipts and used to receive the amount on behalf of Mr.O.P.Goel. Mr.O.P.Goel Expired in December 1995. Ex.P.39, Ex.P.40, Ex.P.41 and Ex.P.43 were signed by him on the reverse of the vouchers on receipt of payment covered in these exhibits which were maintained Mr.O.P.Goel. The CDRs and FDRs issued by the Bank in the name of Adyar Gate Hotel are Ex.P.2 to Ex.P.8 and on the reversed side Mr.O.P.Goel has signed them whose signature P.W.12 could very

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well identify. Ex.P.10 stands in favour of Adyar Gate Hotel, in which neither P.W.12 nor Mr.O.P.Goel has signed on the back side.

15. P.W.13 is the chief Manager working in Oriental Bank of Commerce, New Delhi. He would depose that Ex.P.97 was given by the accused D.Sekar to Shri.Ramesh K.Kalra under his own handwriting on 24.5.1995. Mr.Ramesh Kalra is the Chief Manager, Inspection and Control Department in New Delhi. When Ex.P.97-letter was given by the accused D.Sekar to Shri.Ramesh K.Kalra, besides P.W.13, Mr.Ramesh Kalra, Mr.O.P.Agarwal were also present. After the inspection Shri.Ramesh K.Kalra arrived at a conclusion that the accused D.Sekar has misappropriated the bank's funds to an extent of Rs.11 lahks and on 24.4.1995 shown the findings to the accused regarding the misappropriation of funds by the accused. The accused has given a written statement admitting the offence comitted by him but he has confined only to Rs.2.60 lakhs not to Rs.11 lakhs.

16. P.W.14-S.Ramaswamy is the Investigation officer. As per the orders of the Superintendent of Police of CBI ACB, Madras, he had registered the case in R.C.35(A)/95 under Section 120-B r/w 420, 467, 468, 471, and 409 IPC and section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against Shri.Rakesh Malhotra, Manager, Oriental Bank of Commerce and the accused D.Sekar, Special Assistant, Oriental Bank of Commerce. Ex.P.162 is the FIR. He had conducted the investigation and examined the witnesses and recorded their statements. After following all the formalitis, he has laid the charge sheet against the accused on 11.10.1996 under Section 120 (B) r/w 420 IPC, 420 , 477(A) IPC and under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988, in respect of 5 instances for a total sum of Rs.2,56,610/-.

17. When incriminating circumstances were put to the accused he denied his complicity with the crime. After going through the material on records and the evidence both oral and documentary the learned trial judge has come to the conclusion that except the charge under Section 120-B r/w 420 IPC all the remaining charges have been proved against the accused beyond any reasonable doubt and consequently the trial Court has convicted the accused under Section 420 IPC (5 counts) and sentenced to undergo 5 years RI and slapped a fine of Rs.1000/- with default sentence, and also convicted the accused under Section 477(A) IPC and sentenced to undergo 3 years RI and imposed a fine of Rs.2,500/- with default sentence and convicted the accused under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced to undergo 6 months RI. The sentence was ordered to run concurrently and setoff under Section 428 (1) of Cr.P.C was also granted by the learned trial Judge. Aggrieved by the findings of the learned trial Judge, the accused preferred this appeal.

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18. Now the point for determination in this appeal is whether the offence under Section 420, 477(A) IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, has been made out against the accused to warrant conviction under the above provision of law?

19. The Point:-

19(a) When the appeal is taken up for hearing the learned senior counsel Mr.Ashokan appearing for the appellant/accused would submit that as far as the conviction part against the accused by the learned trial Court is concerned he is not going to argue but he will confine himself only for modification of sentence alone. The learned senior counsel would contend that the accused was an Employee's Union Leader in Oriental Bank of Commerce and that he was already dismissed from service and that the accused was arrested on 20.8.1996 and released on bail on 6.5.1998 and from 17.2.1999 ie., from the date of judgment he was in the prison till he got bail on 13.3.1999. So under such circumstances, the learned senior counsel would submit that since the accused is a first offender and had the ordeal of undergoing the trial for nearly three years and this appeal is also pending from 1999 and the accused was in jail for nearly 21 months and the same may be awarded as a punishment instead of sending him to jail once again. The learned senior counsel would further contend that under Section 13(2) r/w 13(1)(d) of the prevention of Corruption Act, 1988, the minimum sentence is one year which the accused had already undergone.

19(b) Heard the learned Special Public Prosecutor on the submissions made by the learned senior counsel for the accused. The learned Special Public Prosecutor would fairly concede that the accused was in jail for nearly 21 months 26 days and submitted that taking into consideration the ordeal of trial for nearly 3 years and thereafter before this court in appeal for nearly 8 years and also taking into consideration the accused had already been dismissed from service, a sympathetic view may be taken by this Court in modifying the sentence alone. The submissions of both the learned senior counsel for the accused as well as the learned Special Public Prosecutor are carefully considered.

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20. In fine, the appeal is dismissed confirming the judgment in C.C.197/1997 on the file of the Principal Special Judge for CBI Cases, Chennai, but the sentence alone is modified to that of one the accused had already undergone in respect of all the charges levelled against him. As far as the fine is concerned the same is confirmed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To

1.The Principal Special Judge for CBI Cases,
Chennai.

2.The Superintendent of Police,
Central Prison, Vellore.

3.The Deputy Superintendent of Police,
SPE CBI, Madras.

4.The Special Public Prosecutor for CBI Cases,
High Court, Madras.

+1cc to Mrs.Gita Asokan, Advocate Sr 15528

SSV (CO)
km/27.3.

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